Supreme Court, U.S.
FILED
SEP 6 1995
CLERK

No. 94-1453

In The Supreme Court of the United States

October Term, 1995

D. Grant Peacock,
Petitioner,
v.
Jack L. Thomas,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

BRIEF OF THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

Diana L.S. Peters *
Paul Limmiatis
Feder & Associates, P.C.
1850 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 955-8305
Attorneys for National Coordinating Committee for Multiemployer Plans
* Counsel of Record

September 6, 1995

Wilson - Epes Printing Co., Inc. - 789-0096 - Washington, D.C. 20001

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
INTEREST OF THE NCCMP	4
SUMMARY OF ARGUMENTS	7
1. Federal common law	7
2. Jurisdiction over veil-piercing claims to enforce an ERISA judgment	8
ARGUMENT	9
I. IN ACTIONS TO ENFORCE ERISA, THE TERMS OF EMPLOYEE BENEFIT PLANS, OR ERISA JUDGMENTS, FEDERAL COURTS SHOULD ADOPT A FEDERAL VEIL-PIERCING STANDARD TO DETERMINE WHETHER CORPORATE SEPARATENESS SHOULD BE DISREGARDED	9
A. A federal veil-piercing standard is appropriate for all stages of ERISA enforcement	9
B. A federal veil-piercing standard is appropriate where federal policies are at stake	11
C. A federal veil-piercing standard accommodates the economic realities in which multiemployer plans operate	14
II. FEDERAL JURISDICTION OVER CORPORATE VEIL-PIERCING CLAIMS TO COLLECT ERISA JUDGMENTS IS CONSISTENT WITH ERISA'S BROAD GRANT OF FEDERAL JURISDICTION TO ENFORCE ERISA RIGHTS AND OBLIGATIONS, AND IS SUPPORTED BY APPLICABLE LAW	16

TABLE OF CONTENTS—Continued

	Page
A. Three distinct bases of federal jurisdiction exist where federal courts are asked to enforce a prior ERISA judgment by applying a federal common law veil-piercing standard	16
B. The compelling national interests legislated in ERISA justify the Fourth Circuit's finding that the federal district court has ancillary jurisdiction over postjudgment efforts to pierce the corporate veil of an ERISA-judgment debtor, as the retention of federal jurisdiction to impose liability in such circumstances is necessary to vindicate the federal courts' authority and effectuate their decrees	18
C. The district court had subject matter jurisdiction over Respondent's claim against Peacock under 28 U.S.C. § 1331, as suits to pierce the corporate veil to collect federal judgments "arise under" federal common law	21
D. Suits to pierce the corporate veil to enforce a prior ERISA judgment state a cause of action under ERISA Section 502(a)(3)	24
CONCLUSION	27

TABLE OF AUTHORITIES

Cases	Page
Alman v. Danin, 801 F.2d 1 (1st Cir. 1986)	13
Aldinger v. Howard, 427 U.S. 1 (1976)	20
Anderson v. Abbott, 321 U.S. 349 (1944)	12, 24
Bangor Punta Operations v. Bangor & Aroostook Ry., 417 U.S. 703 (1974)	11
Concrete Pipe and Products of California v. Construction Laborers Pension Fund for Southern California, 113 S.Ct. 2264 (1993)	4
Conley v. Gibson, 355 U.S. 41 (1957)	24
Connors v. Princeton Coal Group, 770 F. Supp. 1132 (S.D.W.Va. 1991)	11
Cutting v. Jerome Foods, 993 F.2d 1293 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 308 (1993)	3
DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681 (4th Cir. 1976)	11
Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989)	3, 13
First National Bank v. Banco Para El Comercio Exterior de Cuba, 462 U.S. 611 (1983)	24
FMC Corp. v. Holliday, 498 U.S. 52 (1990)	3, 4
Franchise Tax Board v. Laborer's Vacation Trust, 463 U.S. 1 (1983)	21, 22, 26
IAM National Pension Fund v. Wakefield Industries, 612 F. Supp. 643 (D.D.C. 1985)	13
Illinois v. City of Milwaukee, 406 U.S. 91 (1972)	21
Keffer v. H.K. Porter Co., 872 F.2d 60 (4th Cir. 1989)	11
Kokkonen v. Guardian Life Ins. Co. of America, 114 S. Ct. 1673 (1994)	18
Laborers Clean-Up Contract Admin. Trust Fund v. Uriarte Clean-Up Serv., Inc., 736 F.2d 516 (9th Cir. 1984)	14
Leddy v. Standard Drywall, 875 F.2d 383 (2d Cir. 1989)	11
Lewis v. Benedict Coal Corp., 361 U.S. 459 (1960)	16
Local 144 Nursing Home Pension Fund et al. v. Demisay, 113 S.Ct. 2252 (1993)	4
Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134 (1985)	23

TABLE OF AUTHORITIES—Continued

	Page
Mertens v. Hewitt Associates, 113 S.Ct. 2063 (1993)	23
National Farmer's Union Insurance Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985)	21
Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978)	20
Robbins v. Schneider Moving & Storage Co., 466 U.S. 364 (1984)	16
Taylor v. Standard Gas Co., 306 U.S. 307 (1939)	11, 26
Thomas v. Peacock, 39 F.3d 493 (4th Cir. 1994)	12, 14, 17, 22, 25, 26
Town of Brookline v. Gorsuch, 667 F.2d 215 (1st Cir. 1981)	11, 12
United Electrical Workers v. 163 Pleasant Street Corp., 960 F.2d 1080 (1st Cir. 1992)	13, 14
United States v. Van Diviner, 822 F.2d 960 (10th Cir. 1987)	12

Federal Statutes

28 U.S.C. § 1331	8, 10, 18, 21, 22, 23
29 U.S.C. § 186(c) (5)	6
Labor-Management Relations Act of 1947	6
Employee Retirement Income Security Act of 1974 (ERISA)	1
29 U.S.C. §§ 1001-1461	2
29 U.S.C. § 1002(5)	6
29 U.S.C. § 1002(9)	6
29 U.S.C. § 1056(d) (3) (B) (i)	2
29 U.S.C. § 1109(a)	9
29 U.S.C. § 1132	2, 26
29 U.S.C. § 1132(a) (1)	10
29 U.S.C. § 1132(a) (1) (B)	2
29 U.S.C. § 1132(a) (2)	9, 10, 17, 20, 23, 24, 25
29 U.S.C. § 1132(a) (3)	6, 9, 10, 22, 23, 24, 25, 26
29 U.S.C. § 1132(e) (1)	2, 8, 10, 17, 18, 20, 25
29 U.S.C. § 1144(b) (2) (A), (B)	2
29 U.S.C. § 1144(b(4)	2
29 U.S.C. § 1144(b) (7)	2
29 U.S.C. § 1145	6, 9, 10

TABLE OF AUTHORITIES—Continued

Other Authorities

	Page
1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations*, § 41, at 603 (perm. ed. rev. vol. 1990)	22

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 94-1453

D. GRANT PEACOCK,
Petitioner,

v.

JACK L. THOMAS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF OF THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

PRELIMINARY STATEMENT

The National Coordinating Committee for Multiemployer Plans ("NCCMP") submits this brief *amicus curiae* to urge the Court to affirm the holding below. Letters manifesting the consent of Petitioner and Respondent have been filed with the Clerk of the Court.

By enacting the Employee Retirement Income Security Act ("ERISA") in 1974 and its subsequent amendments

in 1980, Congress sought to enhance the financial stability of multiemployer employee benefit plans and to foster the growth and maintenance of such plans. 29 U.S.C. §§ 1001-1461. As reflected in ERISA's legislative history and more than two decades of case law construing the statute, Congress intended to implement the policies and objectives underlying the law by making all aspects of employee benefit plan regulation an exclusive federal concern. To this end, the statute itself contains a civil enforcement provision which—with one limited exception—gives federal district courts exclusive jurisdiction over all actions brought by plan fiduciaries (*e.g.*, the trustees of multiemployer plans), participants, beneficiaries, and the Secretary of Labor to enforce the statute or the terms of a plan, and over all actions by participants, beneficiaries, or the Secretary against plans or their fiduciaries for similar relief. 29 U.S.C. § 1132.[1] In addition, ERISA contains an expansive preemption provision providing for the supersedure of all state laws (including state common law) that "relate to" employee benefit plans except where expressly exempted.[2] Moreover, where ERISA is silent as to a particular matter affecting employee benefit plans, courts are required to develop a body of federal common

[1] The sole exception is to be found in ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), which gives state courts concurrent jurisdiction over actions brought by participants or beneficiaries under § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), to enforce or clarify their rights to benefits under a plan. In such actions, however, state courts are required to apply federal law. Because the federal courts have far greater experience with ERISA matters, and because federal law is controlling, most plans or their trustees routinely remove such state actions to federal court, as can be judicially noticed.

[2] For example, state insurance, banking, and securities laws are expressly exempted from preemption except as applied to self-insured plans. 29 U.S.C. § 1144(b)(2)(A) and (B); likewise, state criminal laws of general applicability are expressly exempted under 29 U.S.C. § 1144(b)(4), while qualified domestic relations orders, as permitted by ERISA § 206(d)(3)(B)(i), are exempt under 29 U.S.C. § 1144(b)(7).

law to fill the statute's interstices. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).[3]

In the case at bar, the district court, mindful of the exclusively federal interests at stake, first assumed jurisdiction over the plaintiff-participant's action to enforce a prior ERISA judgment, and then applied a federal common law veil-piercing standard to impose liability for the judgment debt on an individual whose postjudgment conduct resulted in the original judgment debtor's financial inability to satisfy the judgment. The Fourth Circuit affirmed. Petitioner, however, attempts to turn the federal scheme on its head by arguing first that the federal court lacked subject matter jurisdiction over the participant's enforcement action and second, that even if jurisdiction did exist, state law rather than a more liberal federal veil-piercing standard should be applied.

The NCCMP files this brief because it strongly believes that a federal veil-piercing standard should be applied whenever a federal court finds it necessary to disregard the corporate form to enforce ERISA or an ERISA judgment. In addition, the NCCMP believes that, consistent with ERISA's goals and this Court's precedents, the trustees of multiemployer plans should be able to vindicate their rights in federal courts, including—where appropriate—against individuals whose postjudgment conduct is responsible for making an ERISA judgment uncollectible, to the detriment of a plan or its participants and beneficiaries.

[3] For example, following this Court's ruling in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), in which the Court ruled that state antisubrogation laws are preempted by ERISA, federal courts have been developing federal common law to further define the scope of a plan's subrogation rights. *See Cutting v. Jerome Foods*, 993 F.2d 1293 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 308 (1993) (state "make whole" doctrine not adopted as federal common law and does not bar plan's right to full reimbursement of benefits paid).

INTEREST OF THE NCCMP

The NCCMP is a nonprofit, tax-exempt organization that was formed after the enactment of ERISA to participate in the further development of employee benefits legislation, government regulations promulgated to implement ERISA, and other laws affecting multiemployer plans. Currently more than 240 multiemployer plans and related international unions, located in at least 37 states, are affiliated with the NCCMP. These plans are representative of all the nation's multiemployer plans, which cover more than nine million workers. Thus, considering the NCCMP's broad range of constituent organizations and its contacts with hundreds of trustees who are charged with administering multiemployer plans in accordance with ERISA's fiduciary principles, the NCCMP believes that it is qualified to advise this Court of the practical implications the circuit court's decision will have on self-funded multiemployer plans, and to represent herein the position of the trustees, participants, and beneficiaries of such plans.[4]

The NCCMP believes that the Fourth Circuit correctly affirmed the district court's assumption of jurisdiction over an ERISA plan participant's action to enforce a prior ERISA judgment, and it endorses the circuit court's application of a federal common law veil-piercing standard to impose liability on an individual whose postjudgment conduct defeated the judgment. Therefore, the NCCMP submits this brief in support of the Respondent's request that this Court affirm the court of appeal's decision. To that end, this brief will delineate the far-reaching and beneficial consequences the Fourth Circuit's decision will

---

[4] The NCCMP has participated as an *amicus curiae* in numerous cases involving important issues affecting multiemployer plans. *See, e.g., Local 144 Nursing Home Pension Fund et al. v. Demisay*, 113 S. Ct. 2252 (1993); *Concrete Pipe and Products of California v. Construction Laborers Pension Fund for Southern California*, 113 S. Ct. 2264 (1993); *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

have on multiemployer plans in situations other than, and in addition to, the specific fact pattern at bar—particularly with respect to those plans' collection efforts.

The nature of multiemployer plans and the economic realities in which they operate make a federal veil-piercing standard critically important. As noted above, multiemployer employee benefit plans affiliated with the NCCMP are located throughout the nation. Many of those affiliates are large plans whose participants and contributing employers reside in numerous states. Consequently, actions to collect contributions and to enforce ERISA judgments against delinquent employers may be subject to varying degrees of restrictive state veil-piercing standards and laws pertaining to enforcement of judgments, thereby defeating Congress's goal of ensuring uniformity in the treatment of employee benefit plans.

Multiemployer plan trustees have a fiduciary obligation to maintain a sound funding policy and to collect unpaid contributions owed by contributing employers. For many reasons, however, plan trustees face great obstacles when attempting to fulfill those obligations. One such obstacle is the fact that many contributing employers who fail to make required contributions escape their liability by hiding behind the facade of corporate entities that are often nothing more than empty shells. Indeed, in many industries represented by multiemployer plans, such as the building and construction trades and service industries (such as restaurants), contributing employers are frequently family-owned close corporations which operate with substantial indifference to corporate formalities and to the appropriate capitalization of those corporations. Despite that fact, however, multiemployer plans, as third-party beneficiaries to collective bargaining agreements between unions and employers, must accept contributions from these employers and, concomitantly, must provide benefits to the employers' eligible participants, without having had a prior opportunity to investigate the creditworthiness of those employers or the manner in which

they operate their corporate businesses (information which is normally impossible to obtain absent discovery in the context of litigation). Thus, multiemployer plans, unlike ordinary trade creditors who can assess the risks associated with their contractual undertakings, suffer a great disadvantage to their self-preservation. Because of that serious disadvantage, multiemployer plans require and deserve the benefit of a more relaxed veil-piercing standard.[5]

Moreover, although ERISA contemplates that collection actions brought under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), and ERISA Section 515, 29 U.S.C. § 1145 for violation of the terms of a plan or of a collective bargaining agreement will normally be brought against contributing employers as business entities, the statutory definition of "employer" is sufficiently broad to permit liability for delinquent contributions to be imposed on the company's owners or directors in appropriate circumstances[6]—not because of their titles or positions, but because of specific conduct. In this context, a majority of federal courts have adopted a liberal federal veil-piercing standard as federal common law that is consistent with the fact that ERISA enforcement actions are federal cases; that ERISA places less importance on corporate separateness than on the policies sought to be

[5] The status of multiemployer plans as third-party beneficiaries of collective bargaining agreements executed by others is established pursuant to Section 302(c)(5) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 186(c)(5). Multiemployer plans are unique creatures of federal statute, and their structure is strictly mandated by federal law. Thus, the disadvantages inherent in collecting judgments are not assumed by choice.

[6] ERISA § 3(5), 29 U.S.C. § 1002(5), defines the term "employer" as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan." ERISA § 3(9), 29 U.S.C. § 1002(9), defines "person" as an "individual" as well as a "partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated association, or employee organization."

implemented by the statute; and that individual state veil-piercing standards, which are typically very restrictive, should not be utilized to frustrate federal legislative policy. The NCCMP supports this view and is concerned that it not be eroded. Finally, the NCCMP submits that it would be incongruous and inconsistent with ERISA's enforcement scheme to relegate such postjudgment enforcement actions to state courts, only to require those courts to apply federal common law to enforce a federal court judgment.

Thus, the NCCMP's brief focuses on issues which it believes may not be adequately presented elsewhere, including:

> (a) the need for a federal veil-piercing standard as part of ERISA's overall enforcement scheme, and, in particular, in connection with the collection efforts of multiemployer plans; and,
>
> (b) the propriety of federal courts' assuming jurisdiction over postjudgment enforcement actions where a federal common law standard of liability provides the only correct rule of decision.

SUMMARY OF ARGUMENTS

1. Federal common law

Where justice, fairness, and equity dictate, both federal and state courts are prepared to disregard the corporate form and to impose liability on a company's shareholders. As state veil-piercing standards are typically very restrictive, however, federal courts have traditionally applied a more liberal standard in order to effectuate federal interests and to enforce federal judgments. Consistent with this tradition, and with this Court's precedents, the majority of federal courts have fashioned a federal common law standard of veil-piercing in ERISA-related disputes and in actions to enforce ERISA judgments, in the belief that ERISA's overriding interest in protecting the inter-

ests of plan participants and beneficiaries justifies a more liberal approach than permitted by state law.

While there is no litmus test for disregarding the corporate form, and because federal courts must still consider a totality of circumstances, the NCCMP supports the federal common law standard because it enables the federal courts—when weighing competing considerations—to give due regard to ERISA's policy and purposes. As stated above and as discussed further below in Section I, C., this more liberal approach is particularly important to multiemployer plans because of their inability to screen potential contributing employers for credit-worthiness or to terminate their relationship with undercapitalized, insolvent, mismanaged, or fictitious corporations. Accordingly, federal courts should not apply standards that have developed under state law with regard to ordinary classes of creditors who voluntarily assume the risk of their contractual undertakings.

2. Jurisdiction over veil-piercing claims to enforce an ERISA judgment

The federal district court had subject matter jurisdiction over Respondent's veil-piercing action under one of three alternative bases of federal jurisdiction. First, the Fourth Circuit properly held that the federal district court had ancillary jurisdiction over the veil-piercing claim, as the court's continuing jurisdiction over an individual who intentionally caused the judgment debtor to violate the court's prior order of judgment was necessary to vindicate the court's judgment and effectuate its decree. Second, as federal standards apply in determining whether to disregard the corporate form to impose liability for violations of a federal statute, the veil-piercing suit "arises under" federal law, and federal jurisdiction exists under 28 U.S.C. § 1331. And third, federal jurisdiction exists under ERISA Section 502(e)(1), as Respondent's veil-piercing suit alleged facts sufficient to state a claim under

ERISA Section 502(a)(3) for equitable relief to redress the ERISA-judgment debtor's violations of ERISA.

ARGUMENT

I. IN ACTIONS TO ENFORCE ERISA, THE TERMS OF EMPLOYEE BENEFIT PLANS, OR ERISA JUDGMENTS, FEDERAL COURTS SHOULD ADOPT A FEDERAL VEIL-PIERCING STANDARD TO DETERMINE WHETHER CORPORATE SEPARATENESS SHOULD BE DISREGARDED

A. A federal veil-piercing standard is appropriate for all stages of ERISA enforcement

In the case at bar, a corporate officer and shareholder held not to be liable as a fiduciary in an underlying ERISA action was subsequently held personally liable for a judgment rendered against a corporate fiduciary because the individual's postjudgment conduct resulted in the judgment's being uncollectible against the corporate debtor. To impose liability, the Fourth Circuit applied a federal common law veil-piercing standard to effectuate the prior judgment and, thus, to effectuate ERISA goals and policies.

The NCCMP endorses the Fourth Circuit's reasoning and submits that federal courts should apply a federal veil-piercing standard in circumstances wherein the existing facts warrant disregarding the corporate form in order to protect the interests of ERISA funds and their participants and beneficiaries. Federal courts should employ that federal standard whether the operative facts involve prejudgment or postjudgment conduct, and, in the postjudgment context, without regard to the nature of the ERISA judgment sought to be enforced; *i.e.*, a judgment based on breach of fiduciary duty under ERISA Sections 409(a) and 502(a)(2), or a judgment under ERISA Sections 515 and 502(a)(3) for violations of ERISA and/or the terms of the plan.

As a practical matter, the trustees of multiemployer plans will most often seek to invoke a federal veil-piercing standard in the course of prejudgment collection actions arising under Section 502(a)(3) of the statute, 29 U.S.C. § 1132(a)(3).[7] However, unless the Fourth Circuit's ruling is upheld, and a federal veil-piercing standard is made applicable to all stages of ERISA enforcement, the collection remedies available to multiemployer plans could well be substantially reduced,[8] thereby adversely

[7] In such actions, federal courts clearly have subject matter jurisdiction under ERISA §§ 515, 502(a)(1), and 502(e)(1); *i.e.*, the trustees' cause of action arises under §§ 515 and 502(a)(3), while federal common law determines whether the facts in a case militate in favor of disregarding the corporate entity to hold a person or entity other than the contributing employer liable for the company's failure to make contractually required contributions. In our view, the court would likewise have subject matter jurisdiction over an action to enforce against an individual owner a prior judgment for delinquent contributions rendered solely against the corporate debtor under § 502(a)(3), if that individual—like Peacock—engaged in postjudgment conduct rendering the judgment uncollectible. As will be discussed further in the next section of this brief, the federal court's jurisdiction could be premised on ERISA § 502(a)(3), because the postjudgment enforcement action would still be an action for equitable relief to redress violations of ERISA and/or the plan. Moreover, as federal common law would provide the substantive rules of decision, the court would also have federal question jurisdiction under 28 U.S.C. § 1331. Finally, as in the case at bar, the court would have ancillary jurisdiction to effectuate its own judgments. We believe the same principles should apply to a postjudgment enforcement action, such as the case at bar, where the original cause of action arose under § 502(a)(2).

[8] For example, if this Court were to find that traditional state-law principles should be applied to determine whether Peacock should be held liable for the judgment rendered below. As Petitioner urges, federal courts would be more likely to apply the stricter state standard not only in the context of postjudgment enforcement, but also in the context of prejudgment collection actions, unless the Court were also to provide guidelines as to when federal rather than state veil-piercing rules should apply to ERISA actions. As indicated above, however, we do not believe that there is any principled basis on which to make such a distinction; we therefore urge this Court to adopt a federal standard whenever it is necessary to pierce a corporate veil to enforce ERISA.

affecting those plans' ability to provide benefits to their participants and beneficiaries. Thus, selecting an appropriate standard is of crucial importance in enabling those plans to collect the contributions they need in order to remain financially viable.

B. A federal veil-piercing standard is appropriate where federal policies are at stake

The concept that a corporation is an entity separate and apart from the individuals who own and control it is a state-created legal fiction that was created "for the purposes of convenience and to subserve the ends of justice." *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Company*, 540 F.2d 681, 683 (4th Cir. 1976). However, courts will refuse to recognize the corporate entity if such recognition would extend the principles of incorporation beyond their legitimate purposes and would facilitate injustice and inequitable consequences. *Taylor v. Standard Gas Co.*, 306 U.S. 307, 322 (1939); *see also Bangor Punta Operations v. Bangor & Aroostook Ry.*, 417 U.S. 703, 713 (1974). Accordingly, where justice, equity, and fairness dictate, courts disregard the corporate form and treat the corporation and its stockholders as one. *Taylor*, 306 U.S. at 322; *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60 (4th Cir. 1989); *Leddy v. Standard Drywall, Inc.*, 875 F.2d 383 (2d Cir. 1989); *Town of Brookline v. Gorsuch*, 677 F.2d 215, 221 (1st Cir. 1981); *DeWitt*, 540 F.2d at 683; *Connors v. Princeton Coal Group*, 770 F.Supp. 1132 (S.D.W. Va. 1991).

Beyond these general principles (which apply both to federal and state courts), it is well-established by Supreme Court precedent that federal legislative policies affect the standard to be applied in piercing the corporate veil. As a general rule, federal courts will apply a more liberal federal standard where federal interests are involved,

where a lawsuit arises under federal substantive law, or where a federal judgment is sought to be enforced.

In *Anderson v. Abbott*, 321 U.S. 349, 365 (1944), for example, this Court characterized piercing the corporate veil of a bank-holding company to be an issue of federal law and stated that the corporate shield, as a creature of state law, could not be asserted to defeat the federal policies of the national banking law. The Court noted that while states are free to treat shareholders' liability as they wish, in the absence of a conflicting federal incorporation statute, "no State may endow its corporate creatures with the power to place themselves above the Congress of the United States and defeat the federal policy concerning national banks which Congress has announced." *Abbott*, 321 U.S. at 365. And, as the Fourth Circuit correctly observed in *Peacock* "the general rule adopted in the federal cases is that 'a corporate entity may be disregarded in the interests of public convenience, fairness and equity,' (citation omitted). In applying this rule, federal courts will look closely at the purpose of the federal statute to determine whether the statute places importance on the corporate form [citations omitted], an inquiry that usually gives less respect to the corporate form than does the strict common law alter ego doctrine. . . ." *Peacock*, 39 F.3d at 503-04 (quoting *Town of Brookline v. Gorsuch*, 667 F.2d 215, 221 (1st Cir. 1981)).

In cases in which ERISA is implicated, the overriding federal policy at stake is the policy of protecting and preserving the solvency of ERISA-regulated employee benefit plans. Because these benefits are crucial to the welfare of millions of Americans, and to this country's ability to provide for and protect its citizens, a majority of federal courts that are asked to pierce corporate veils adopt the more liberal federal veil-piercing standard, fashioning federal common law to effectuate ERISA's goals. *See U.S. v. Van Diviner*, 822 F.2d 960, 965 (10th Cir. 1987) (where federal interests are implicated, federal common law defines the rights and liabilities of the parties); *IAM*

IAM National Pension Fund v. Wakefield Industries, 612 F. Supp. 643 (D.D.C. 1985) (in determining whether an individual should be liable for company's withdrawal liability, court is guided by federal common law of veil-piercing). *See also Alman v. Danin*, 801 F.2d 1 (1st Cir. 1986) (as ERISA does not attach too great weight to corporate form, allowing shareholders of a marginal corporation to invoke a corporate shield in order to avoid financial obligations to employee benefit plans would be inequitable and is precisely the type of conduct Congress wanted to prevent).[9] These cases are, of course, consistent with this Court's teaching in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989), in which the Court specifically stated that when Congress enacted ERISA, it intended federal courts to fashion a federal common law of rights and obligations under ERISA to carry out the statute's goals and policies.

In fashioning a federal common law standard for veil-piercing, federal courts do not abandon the common law totality-of-circumstances test applied in state courts, nor do they ignore the numerous factors that state courts consider in their veil-piercing analyses. Indeed, federal common law too requires that courts examine certain factors to determine whether a corporate form was properly maintained. In doing so, federal courts may even look to state law standards for guidance. *United Electrical Workers v. 163 Pleasant Street Corp.*, 960 F.2d 1080, 1092-93 (1st Cir. 1992);[10] *Laborers Clean-Up Contract Admin.*

---

[9] In *Alman*, as in the case at bar, the company against which the district court entered an ERISA judgment for delinquent contributions was defunct and assetless; therefore, plaintiffs filed a second action against a related company and two shareholders, seeking to collect the first judgment under a single-enterprise and veil-piercing theory.

[10] In *United Electrical Workers*, the First Circuit noted that "[u]nder Massachusetts common law, disregarding the corporate form is permissible only in rare situations." However, the court found that it would "serve no useful purpose to explore the in-

Trust Fund v. Uriarte Clean-Up Serv. Inc., 736 F.2d 516 (9th Cir. 1984). However, as the Fourth Circuit explained in the case at bar, although there is no "litmus test" in the federal courts for determining when to disregard the corporate form, federal courts, in making that determination, must give substantial consideration to ERISA's goals and policies and its limited deference to the corporate form. Federal courts must also seriously consider the inequitable results that would occur if they were to treat corporate acts that undermine the financial soundness of employee benefit plans (e.g., through the evasion of legal obligations) as the acts of the corporation alone, where a unity of interest and ownership indicates that the separate personalities of the corporation and the individual shareholders no longer exist. *Peacock*, 39 F.3d at 503-04.[11] Thus, because the federal veil-piercing standard is sufficiently flexible to permit policy considerations to be taken so seriously into account, the NCCMP submits that this standard is appropriate to ERISA's enforcement scheme as a whole.

C. A federal veil-piercing standard accommodates the economic realities in which multiemployer plans operate

Multiemployer employee benefit plans are plans created by parties to collective bargaining agreements for the purpose of providing health, retirement, and related benefits to workers and their families. These plans are primarily self-funded through the ongoing contributions of several, hundreds, or even thousands of employers in one or more industries involving participants working or living in several or many states. The contributions are pooled for investment to provide benefits to all participants and beneficiaries of the plan.

A very large number of employers who contribute to multiemployer plans are close corporations. Many of these companies operate with a substantial degree of indifference to corporate formalities. However, because multiemployer plans are third-party beneficiaries of collective bargaining agreements between unions and employers, they generally cannot (and do not) screen prospective contributing employers for reliability or creditworthiness. Moreover, there is little (if any) opportunity for plans to obtain information as to how the employer has structured its business—either before or after it becomes a contributing employer. And, even if such opportunity did exist, multiemployer plans often have no legal right to terminate their relationship with marginal employers, as would a trade creditor who refuses further credit or orders. Thus, multiemployer benefit plans are not like creditors who voluntarily assume the risk of dealing with undercapitalized, insolvent, mismanaged, or fictitious corporations. To balance out this lack of bargaining power, multiemployer benefit plans need, and indeed deserve, greater latitude on their veil-piercing claims than might be accorded to trade creditors who contract directly with debtor corporations, for those creditors are in a better position to gain access to information about a corporation and to assess and/or assume the risks of their undertakings. Accordingly, federal courts should not apply to employee benefit plans standards that have developed under state law with regard to ordinary classes of creditors.[12]

---

terstices of the state law standard [as] this is, after all, a federal question case—and in federal question cases courts are wary of allowing the corporate form to stymie legislative policies." The court added that the rationale for applying a less rigorous federal standard, *i.e.*, for "encouraging a modicum of corporate disregard in ERISA cases," is grounded on "congressional intent" to protect the interests of employee benefit plan participants and their beneficiaries." 960 F.2d at 1091-1092.

[11] Given these concerns, the Fourth Circuit does not require a showing of "plain fraud" to pierce the corporate veil. *Peacock*, 39 F.3d at 504, n.16.

[12] In a somewhat different (though not unrelated context), this Court has previously recognized that employee benefit plans are uniquely situated third-party beneficiaries of collective bargaining

Finally, the NCCMP respectfully represents that by urging this Court to recognize and adopt a relaxed standard of veil-piercing under ERISA, we do not suggest that courts disregard the corporate entity lightly. Rather, we urge this Court to consider that because so much is at stake nationally with respect to the proper funding of employee benefit plans, it is crucial to the well-being of those plans that federal courts balance the degree of impropriety required to pierce a corporate veil with the national goals and policies to be achieved under ERISA. Hence, the NCCMP urges this Court to affirm the federal veil-piercing standard adopted by the Fourth Circuit in the case at bar.

II. FEDERAL JURISDICTION OVER CORPORATE VEIL-PIERCING CLAIMS TO COLLECT ERISA JUDGMENTS IS CONSISTENT WITH ERISA'S BROAD GRANT OF FEDERAL JURISDICTION TO ENFORCE ERISA RIGHTS AND OBLIGATIONS, AND IS SUPPORTED BY APPLICABLE LAW

A. Three distinct bases of federal jurisdiction exist where federal courts are asked to enforce a prior ERISA judgment by applying a federal common law veil-piercing standard

To recapitulate the facts and procedural posture of this case, Respondent (Thomas), on behalf of a class of participants seeking entitlement to certain retirement benefits, succesfully prosecuted a breach of fiduciary duty claim against a corporation (Tru-Tech), which was held responsible for underfunding the plan, and a judgment was entered in the amount of 187,000. The district

---

agreements. The Court has therefore held that defenses which could be raised against the Union as a contracting party can not be raised against trust funds whose trustees sue based on the same contract. *See Lewis v. Benedict Coal Corp.*, 361 U.S. 459 (1960); *Robbins v. Schneider Moving & Storage Co.*, 466 U.S. 364 (1984). Similar principles should apply in adopting a federal veil-piercing standard.

court's jurisdiction over plaintiff's breach of fiduciary duty claim was predicated on ERISA Section 502(e)(1), 29 U.S.C. § 1132(e)(1) as the cause of action was brought under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2). After the judgment was entered, the company's principal shareholder and board chairman (Peacock), who was held not to be a co-fiduciary in the initial action, engaged in a strategy to dissipate the assets of the corporate debtor, resulting in the ERISA judgment's being uncollectible. Therefore, Thomas filed a second federal court action to collect the judgment, urging the district court to pierce Tru-Tech's corporate veil. The district court assumed jurisdiction in the second action and, applying a federal common law standard as being applicable to ERISA, found Peacock liable for the judgment as a result of his postjudgment conduct.

Peacock argued that Thomas's "suit [was] one merely to collect an outstanding judgment and that, because ERISA [was] not thereby implicated, the district court lacked subject matter jurisdiction over the case." 39 F.3d at 499. Arguing that once *Thomas* won its judgment against Tru-Tech it became a judgment creditor like any other, Peacock reasoned that *Thomas* should seek relief in the state courts. Rejecting this argument, the Fourth Circuit concluded that Thomas's attempt to pierce the corporate veil to enforce a prior ERISA judgment was properly entertained by the district court under its ancillary jurisdiction.

Although the NCCMP believes the Fourth Circuit's ruling is consistent with this Court's precedents, and urges affirmance, we believe that alternate bases of federal jurisdiction also exist. As we shall show, where an individual having power to influence the disposition of corporate assets flouts ERISA by rendering an ERISA judgment against that corporation uncollectible, and a subsequent action is brought to enforce the judgment against that individual on a federal veil-piercing theory, federal subject matter jurisdiction necessarily exists under both 28 U.S.C.

§ 1331 and under ERISA Section 502(e)(1). In our view, these bases of federal jurisdiction exist regardless of the nature of the prior ERISA judgment. Moreover, as federal law supplies the exclusive rules of decision, there is no place for state courts in this scheme.

B. The compelling national interests legislated in ERISA justify the Fourth Circuit's finding that the federal district court has ancillary jurisdiction over postjudgment efforts to pierce the corporate veil of an ERISA-judgment debtor, as the retention of federal jurisdiction to impose liability in such circumstances is necessary to vindicate the federal courts' authority and effectuate their decrees

The Fourth Circuit's finding that the federal district court had ancillary jurisdiction over Respondent's attempt to pierce the corporate veil to impose liability on Peacock is fully consistent with this Court's recent precedent. In *Kokkonen v. Guardian Life Ins. Co. of America*, 114 S. Ct. 1673 (1994), the Court articulated the "two separate, though sometimes related" circumstances under which it has asserted ancillary jurisdiction, as follows: "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable the court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* at 1676 (citations omitted). Assuming that the former basis cannot apply in cases such as the one at bar, in which the imposition of liability arises from facts occurring subsequent to a prior judgment, the latter basis plainly supports the exercise of ancillary jurisdiction under facts, such as those at issue, where liability is sought to be imposed on an individual who deliberately causes a judgment debtor to violate the court's prior judgment ordering payment to the successful plaintiff.

The facts in *Kokkonen*, of course, were very different from the facts and concerns at bar, and are therefore particularly useful for contrast. There, the original action, a suit for breach of an agency agreement which had been removed from state to federal court on the basis of diversity jurisdiction, was settled and the action dismissed with prejudice. Although the settlement agreement served as consideration for the dismissal, it was not incorporated into the dismisal order or otherwise committed to the federal court's supervisory authority. Viewing the subsequent alleged breach of the settlement agreement as a breach of contract action having no relationship to the federal court other than the fact that it resulted in the dismissal of the earlier federal suit, this Court found that there was no basis for ancillary jurisdiction given the remoteness of federal concerns to the subject matter of the second dispute.

In contrast, the underlying action in the case at bar arose under a federal statute conferring exclusive jurisdiction on the federal court. Moreover, in the subsequent action to enforce the federal court judgment, federal law supplied the exclusive principles for imposing liability. Finally, unlike the facts in *Kokkonen*, the record in this case plainly reveals that Peacock engaged in a deliberate strategy to cause the judgment debtor to violate the district court's order of judgment. *See* District Court's Findings of Fact Reproduced in Appendix to Petition for Certiorari, at 41a ("In contemplation of the *Thomas* judgment and following its entry, Peacock directed the management of Tru-Tech's affairs to defeat the collection of the *Thomas* judgment by siphoning off the assets of the corporation to certain favored creditors owned or controlled by Peacock."); 42a ("These assets of Tru-Tech were siphoned off by Peacock pursuant to a corporate strategy developed by him. It was the specific intent and purpose of this strategy to siphon off these assets to favored creditors owned or controlled by Peacock *and to defeat collection of the Thomas judgment*. . . ." In his efforts to siphon off the assets of Tru-Tech to favored creditors owned or controlled by Peacock, it was the

specific intent of Peacock to defraud the former employees of Tru-Tech who were beneficiaries of the Pension Plan and *to defeat their legitimate attempt to collect a lawful judgment*." (Emphasis added.) These finding of fact alone place this case squarely within the second basis for ancillary jurisdiction set forth in *Kokkonen*.

Moreover, in *Owen Equipment & Erection Company v. Kroger*, 437 U.S. 365 (1978) this Court's discussion of the factors relevant to a federal court's exercise of ancillary jurisdiction also supports federal court jurisdiction. Although *Owen* was also a diversity case in which the Court found ancillary jurisdiction lacking, Justice Stewart, writing for the majority, explained that "there must be an examination of the posture in which the nonfederal claim is asserted and of the specific statute that confers jurisdiction over the federal claim, in order to determine whether 'Congress in [that statute] has . . . expressly or by implication negated' the exercise of jurisdiction over the particular nonfederal claim." *Id.* at 373 (quoting *Aldinger v. Howard*, 427 U.S. 1, 18 (1976)).

Assuming, *arguendo*, that Thomas's veil-piercing claim does not in and of itself give rise to an independent basis of federal jurisdiction, the character of the initial claim against Tru-Tech, as well as ERISA's policy establishing employee benefits law as an area of exclusive federal concern, are of prime relevance in determining the legitimacy of the district court's continuing jurisdiction over postjudgment efforts to pierce the corporate veil. Because the initial claim against Tru-Tech was brought under ERISA Section 502(a)(2), for breach of fiduciary duty, over which federal courts have *exclusive jurisdiction* under ERISA Section 502(e)(1), the district court's authority to vindicate its judgment against an individual who deliberately caused the judgment debtor to violate the court's order cannot be more clear. Accordingly, the Fourth Circuit's affirmance of the district court's finding of ancillary jurisdiction was fully consistent with this Court's precedent and with ERISA's broad grant of federal jurisdiction over ERISA claims, and there is no logical reason why such veil-piercing actions should be decided by a state court.

C. The district court had subject matter jurisdiction over Respondent's claim against Peacock under 28 U.S.C. § 1331, as suits to pierce the corporate veil to collect federal judgments "arise under" federal common law

As discussed above, federal courts throughout the United States have held that a federal common law standard should be applied in piercing corporate veils to impose liability for ERISA judgments, and in other ERISA-related disputes. Because the resolution of this case turns exclusively on a question of federal substantive law, Respondent's veil-piercing claim "arises under" federal law, and therefore, the federal district court had subject matter jurisdiction under 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

In *Illinois v. City of Milwaukee*, 406 U.S. 91, 100 (1972), this Court held that "§ 1331 jurisdiction will support claims founded upon federal common law as well as those of statutory origin." *See also National Farmer's Union Insurance Companies v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) ("Federal common-law as articulated in rules that are fashioned by court decisions are 'laws' as that term is used in § 1331."). Likewise, in *Franchise Tax Board v. Laborers' Vacation Trust*, 463 U.S. 1 (1983), the Court confirmed that the "arising under" jurisdiction of federal district courts extends beyond those classes of cases in which a federal statute creates the cause of action, to include the general vindication of rights that "necessarily turn[] on some construction of federal law." *Id.* at 9. Summarizing its own interpretations "over many years," the Court characterized as falling within Congress's grant of federal district court juris-

diction, "those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action *or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.*" *Id.* at 27-8. (Emphasis added.)

Although we believe that ERISA Section 502(a)(3) is sufficiently broad to encompass a cause of action for equitable relief in the form of piercing the corporate veil to enforce an ERISA judgment, *infra*, the absence of such a cause of action under ERISA itself would not deprive federal courts of jurisdiction under 28 U.S.C. § 1331 for two distinct reasons.

First, as noted above, this Court's precedents make clear that jurisdiction under § 1331 is not dependent on the existence of a cause of action under another federal statute, but exists wherever resolution of a lawsuit turns entirely on a question of federal common law. Moreover, as the Fourth Circuit found, "an attempt to pierce the corporate veil is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action . . . ." *Peacock*, 39 F.3d at 499, quoting 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations*, § 41, at 603 (perm. ed. rev. vol. 1990). Because "an attempt to pierce the corporate veil is necessarily subsidiary to some primary cause of action," *id.*, the postjudgment veil-piercing claim need not state an independent cause of action under ERISA, as complete relief may be afforded by federal common law.

Second, in suing Peacock to pierce the corporate veil, Respondent was not attempting to hold Peacock liable for his own ERISA violations, but rather, was seeking to hold Peacock liable, under federal common law, to redress Tru-Tech's ERISA violations. Therefore, because Respondent's veil-piercing claim does not allege that Peacock violated ERISA, it need not fall within one of ERISA's "six carefully integrated civil enforcement provisions." *See*

Mertens v. Hewitt Associates, 113 S. Ct. 2063 (1993); *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985). In both *Mertens* and *Russell*, plaintiffs alleged that defendants violated ERISA, but the Court ruled against plaintiffs in both cases on the grounds that the relief sought was not available under ERISA Section 502.[13] However, by claiming that a defendant such as Peacock breached a federal common law duty to refrain from rendering worthless a federal court judgment, as opposed to a duty imposed by ERISA, the federal common law claim need not fall within ERISA's "carefully reticulated" enforcement scheme. Instead, although ERISA affects the standard to be applied in determining liability, the veil-piercing claim arises under federal common law, and federal jurisdiction therefore exists under 28 U.S.C. § 1331.

Finally, as discussed earlier, the equitable principle of disregarding the corporate form to advance the policies of federal legislation is not unique to ERISA, but repre-

---

[13] *Mertens* and *Russell* are readily distinguishable from both the case at bar as well as from analogous actions by multiemployer plan trustees seeking to enforce ERISA judgments for delinquent contributions against individuals on a federal common law veil-piercing theory. In *Mertens*, this Court held that ERISA § 502(a)(3) does not authorize suits for money damages against nonfiduciaries for knowingly participating in a fiduciary's breach of fiduciary duty, as § 502(a)(3) contemplates only "equitable relief," whereas direct and consequential damages constitute "legal relief" and are available only in actions under ERISA § 502(a)(2) against fiduciaries. In *Russell*, the Court held that a participant could not sue under ERISA § 502(a)(2) to recover personally compensatory or punitive damages resulting from a plan administrator's belated processing of a claim, as any recovery arising from a breach of fiduciary duty claim inures solely to the benefit of the plan. The Court also found that ERISA's civil enforcement scheme does not contemplate punitive damages. In postjudgment federal veil-piercing actions of the type at bar, ERISA causes of action will already have been pursued to final judgment against a proper defendant; federal common law merely permits those judgments to be enforced against a nonjudgment debtor where equity and justice require the corporate entity to be disregarded.

sents a traditional remedy provided by federal courts. *Anderson v. Abbott*, 321 U.S. 349 (1944); *First National Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983). Therefore, even assuming, *arguendo*, that Respondent's veil-piercing suit fails to state a claim under ERISA Section 502(a), the exclusivity of ERISA's civil enforcement scheme cannot be interpreted to displace equitable remedies traditionally recognized by the courts of the United States.

D. Suits to pierce the corporate veil to enforce a prior ERISA judgment state a cause of action under ERISA Section 502(a)(3)

Section 502(a)(3) of ERISA provides that a civil action may be brought "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) *to obtain other appropriate equitable relief* (i) *to redress such violations* or (ii) to enforce any provisions of this title or the terms of the plan." (Emphasis added.)

This provision is very broad. While it limits the classes of persons who are authorized to seek redress of ERISA violations, and provides only for equitable relief, it does not limit either the type of ERISA violations for which equitable relief is available or the persons against whom (or which) an action can be brought. Accordingly, the NCCMP submits that Respondent's veil-piercing suit falls literally within the above provision, as would a suit brought by multiemployer plan trustees to enforce a judgment rendered in a collection action.[14] Therefore, federal

[14] Although Respondent's Complaint did not allege a cause of action under § 502(a)(3), we believe Thomas's suit to pierce the corporate veil under ERISA stated an ERISA claim under the liberal notice pleading rule set forth in *Conley v. Gibson*, 355 U.S. 41 (1957).

courts should have exclusive jurisdiction under ERISA Section 502(e)(1).

We parse the provisions as follows. In the context of a postjudgment enforcement action, a federal court will already have determined that ERISA or "the terms of the plan" have been "violated" and will have rendered a judgment against the person(s) answerable for the harm—either under Section 502(a)(2) or Section 502(a)(3). Where an individual having power over a corporate judgment debtor deliberately flouts that judgment and makes it uncollectible, a participant, beneficiary, or fiduciary may seek relief, under Section 502(a)(3), to "redress" that subsequent "violation." Therefore, the only question that requires further analysis is whether veil-piercing constitutes "other appropriate equitable relief."

Although the Fourth Circuit did not consider veil-piercing in the context of Section 502(a)(3), it stated quite clearly that "the doctrine of piercing the corporate veil is an equitable one," citing 1 *Fletcher, supra.* 39 F.3d at 499-500. Distinguishing *Mertens, supra,* the Court of Appeals stated, further, that "[t]he current attempt by plaintiffs is not, however, . . . an independent action for monetary damages against a nonfiduciary, but an *equitable attempt* to satisfy a previous judgment entered against a fiduciary [e.g., a corporate judgment debtor]."[15] *Id.* at

[15] This distinction cannot be overemphasized, and the Fourth Circuit correctly rejected Peacock's suggestion that Thomas's second action constituted a second bite at the apple or an attempt to circumvent *Mertens*. First, as noted earlier. *Mertens* holds only that § 502(a)(3) does not authorize suits for *money damages* against nonfiduciaries who assist fiduciaries in breaching their fiduciary obligations; *Mertens* does not foreclose suits for *equitable relief under* § 502(a)(3) against nonfiduciaries to redress such violations, let alone to redress other and different violations of ERISA. Second, Thomas's second action was not predicated on Peacock's violation *of any* fiduciary duty under ERISA, but on Peacock's deliberate attempt to render the corporate debtor judgment-proof.

502. The Fourth Circuit's characterization accords with this Court's recognition that veil-piercing to collect judgments based on federal law is a traditional equitable remedy. *See e.g., Taylor v. Standard Gas,* 306 U.S. at 322.

In sum, ERISA Section 502(a)(3) requires two elements, a violation of ERISA and a request for equitable relief. A violation of ERISA can result from the violation of a specific statutory provision or from a violation of the federal common law of ERISA.[16] Consequently, because Peacock violated the federal common-law of ERISA by causing an ERISA judgment to be rendered uncollectible, and because veil-piercing is an equitable remedy, both requirements of Section 502(a)(3) have been satisfied in this case.

[16] In fact, this Court, in *Franchise Tax Board,* stated that, "federal jurisdiction over suits under § 502 is exclusive, and they are governed entirely by federal common law." *Franchise Tax Board,* 463 U.S. at 19-20, n.20.

CONCLUSION

For the reasons stated above, the NCCMP respectfully urges this Court to affirm the decision of the Fourth Circuit, to hold that a federal veil-piercing standard should be applied by the federal courts whenever it is necessary to disregard the corporate form in the context of an ERISA-related dispute, and to hold that federal courts have exclusive jurisdiction over suits to enforce ERISA judgments where liability is predicated on a veil-piercing theory.

Respectfully submitted.

DIANA L.S. PETERS *
PAUL LIMMIATIS
FEDER & ASSOCIATES, P.C.
1350 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 955-8305
Attorneys for National Coordinating Committee for Multiemployer Plans

September 6, 1995

* Counsel of Record